

Wrobel, Mackenzie

From: Pedi, Nicole K. <Pedi@rlf.com>
Sent: Wednesday, March 3, 2021 4:03 PM
To: Wrobel, Mackenzie
Subject: RE: Activity in Case 1:20-cv-00404-MN Tom Hussey Photography, LLC v. BDG Media, Inc. Oral Order

Mackenzie,

We do not agree with your interpretation of the Court's March 1, 2021 Order and will raise with the Court that the amended complaint that you file today is substantively different from the version you included with your January 19, 2021 submission. Furthermore, as the Court's March 1, 2021 Order expressly states: "Defendant may thereafter file a motion to dismiss the amended complaint (including on the grounds that Plaintiff did not cure the deficiencies in its original complaint)" and instructs that "Defendant should also renew its motion to transfer this case[.]" we will file a motion to dismiss the amended complaint or in the alternative, to transfer the case in accordance with the Order.

If Plaintiff requests a meet and confer on any of the issues and motions raised in this email chain, please advise and provide your availability. Otherwise, we understand that Plaintiff will file an amended complaint today and we will move to dismiss (and/or for other relief) or in the alternative, to transfer.

Regards,
Nicole

Nicole K. Pedi
Richards, Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801
Cell: 347-219-1895
Office: 302-651-7844
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Email: Pedi@rlf.com

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From: Wrobel, Mackenzie

Sent: Wednesday, March 3, 2021 1:58 PM

To: Pedi, Nicole K.

Subject: RE: Activity in Case 1:20-cv-00404-MN Tom Hussey Photography, LLC v. BDG Media, Inc. Oral Order

Hi Nicole:

Respectfully, we do not agree with your interpretation of the Court's Order of March 1, 2021. The Court's Order granted Plaintiff's Rule 59(e) motion, not a Rule 15 motion directing Plaintiff to file a specific amended complaint. The Court's Order states, in relevant part: "IT IS HEREBY ORDERED that *Plaintiff's motion pursuant to Rule 59(e) to alter or amend the judgment of dismissal is GRANTED* to the extent it seeks permission to file an amended pleading. The Court previously dismissed Plaintiff's complaint without prejudice. *Plaintiff shall filed any amended complaint on or before March 3, 2021.*" D.I. 25 (emphasis added).

Plaintiff's amended complaint, which Plaintiff will file today, complies with the Court's Order. To the extent Defendant thinks a meet and confer to further discuss this matter may be helpful, we are happy to schedule a call for this afternoon. *Please let us know as soon as possible if you would like to telephonically meet and confer today.*

Furthermore, although Plaintiff disagrees that there is a basis to move to dismiss the amended complaint, it is clear from your email that Defendant intends to do so. We are happy to meet and confer with you on the merits of that motion when the time comes. For now, please be advised that Plaintiff does not believe Defendant can, in good faith and without a risk of waiver, move to dismiss the amended complaint and, if unsuccessful, move to transfer the case.

Mackenzie M. Wrobel

Duane Morris LLP

P: +1 302 657 4925

From: Pedi, Nicole K. <Pedi@rlf.com>

Sent: Wednesday, March 3, 2021 1:03 PM

To: Wrobel, Mackenzie <MMWrobel@duanemorris.com>

Subject: RE: Activity in Case 1:20-cv-00404-MN Tom Hussey Photography, LLC v. BDG Media, Inc. Oral Order

Mackenzie,

I've spoken with co-counsel and we do not agree to your proposal. In accordance with the Court's March 1, 2021 Oral Order, Plaintiff should proceed to file the version of the amended complaint that the Court granted Plaintiff leave to file today, and we will proceed with moving to dismiss that amended complaint in the Delaware District Court. Defendant will only request to transfer the case to another jurisdiction as alternative relief should the Delaware Court not grant our motion to dismiss with prejudice. But an order seeking dismissal of the complaint with prejudice is the relief we are seeking.

Moreover, the version of the amended complaint that you circulated yesterday is not the proposed amended complaint that Plaintiff included in its January 19, 2021 request to the Court for leave to amend (D.I.

21). Accordingly, the Court has not granted Plaintiff leave to file this new proposed amendment and Defendant does not consent to it. Had Plaintiff properly submitted this new proposed amendment to the Court in its submission at D.I. 21, Defendant would have opposed the request on the additional grounds that Plaintiff is aware that the allegations now included for the first time in paragraphs 59 and 62 are objectively false. Specifically, by the time Plaintiff contacted BDG, the photos referenced in the complaint were not up at all. This is reflected in the attached screenshots taken on January 10, 2020 to preserve evidence, and obviously, the photos are not up today. As Plaintiff is also aware, BDG never posted the photos to Pinterest, but BDG did remove them from Pinterest in January, when it first learned of their existence from the proposed amended complaint. Once again, the photos are clearly not posted today.

As described herein, Plaintiff has not been granted leave by the Court to file these false allegations included in the new proposed amended complaint that Plaintiff circulated yesterday, and Defendant does not consent to Plaintiff filing them. Furthermore, should Plaintiff request leave from the Court to amend the complaint further to add these false allegations, Defendant reserves all rights to seek any and all available relief from the Court.

Regards,
Nicole

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From: Wrobel, Mackenzie <MMWrobel@duanemorris.com>
Sent: Tuesday, March 2, 2021 4:42 PM
To: Pedi, Nicole K. <Pedi@rlf.com>
Subject: RE: Activity in Case 1:20-cv-00404-MN Tom Hussey Photography, LLC v. BDG Media, Inc. Oral Order

Hi Nicole: The attached version sets forth the substance of Plaintiff's Amended Complaint. Plaintiff reserves the right to make edits before filing the final draft. Thank you.

Mackenzie M. Wrobel

Duane Morris LLP

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From: Pedi, Nicole K. <Pedi@rlf.com>

Sent: Tuesday, March 2, 2021 11:47 AM

To: Wrobel, Mackenzie <MMWrobel@duanemorris.com>

Subject: RE: Activity in Case 1:20-cv-00404-MN Tom Hussey Photography, LLC v. BDG Media, Inc. Oral Order

Thanks for the follow-up, Mackenzie.

I spoke with my co-counsel and we're not sure what the basis is for the additional count you're describing, including whether it's a claim for contributory/inducement or vicarious liability. Regardless, since the new proposed count is not included in the proposed amendments you submitted to the Court when requesting leave to amend, we would need to see a draft before we can consider the request and make a decision.

Thanks,
Nicole

Nicole K. Pedi
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From: Wrobel, Mackenzie <MMWrobel@duanemorris.com>

Sent: Tuesday, March 2, 2021 11:03 AM

To: Pedi, Nicole K. <Pedi@rlf.com>

Subject: RE: Activity in Case 1:20-cv-00404-MN Tom Hussey Photography, LLC v. BDG Media, Inc. Oral Order

* EXTERNAL EMAIL *

Hi Nicole:

Thanks for the call back this morning. After we spoke I conferred with Steve and can confirm that Plaintiff intends to add a claim for indirect infringement against the same party and based on the same facts as set forth in the draft amended complaint we previously circulated for your review, regardless of whether the case stays in Delaware or transfers to New York. We thus propose assenting to a transfer upon an agreement that the deadline for filing the amended complaint be extended until 7 days following entry of the case in New York. Given the differences between the motion procedures applicable to the different Courts (and between different judges), we propose having the case docketed, and the applicable procedures identified, before the time for filing Defendant's intended motion to dismiss begins to run.

Please let me know if you have any additional questions. Thank you.

Mackenzie M. Wrobel

Duane Morris LLP

P: +1 302 657 4925

From: Wrobel, Mackenzie

Sent: Tuesday, March 2, 2021 10:16 AM

To: 'Pedi, Nicole K.' <Pedi@rlf.com>

Subject: FW: Activity in Case 1:20-cv-00404-MN Tom Hussey Photography, LLC v. BDG Media, Inc. Oral Order

Hi Nicole: I hope you are well. I left a voicemail for you (cell phone number) regarding the below. Please give me a call today at your earliest convenience: 570-764-3562. Thank you!

Mackenzie M. Wrobel

Duane Morris LLP

P: +1 302 657 4925

From: ded_nefreply@ded.uscourts.gov <ded_nefreply@ded.uscourts.gov>

Sent: Monday, March 1, 2021 2:29 PM

To: ded_ecf@ded.uscourts.gov

Subject: Activity in Case 1:20-cv-00404-MN Tom Hussey Photography, LLC v. BDG Media, Inc. Oral Order

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U.S. District Court

District of Delaware

Notice of Electronic Filing

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Case Name: Tom Hussey Photography, LLC v. BDG Media, Inc.

Case Number: [1:20-cv-00404-MN](#)

Filer:

Document Number: 25(No document attached)

Docket Text:

ORAL ORDER re [21] Letter, [20] MOTION Pursuant to Rule 59(e) to Alter and/or Amend the Judgment of Dismissal, [23] Letter - IT IS HEREBY ORDERED that [20] Plaintiff's motion pursuant to Rule 59(e) to alter or amend the judgment of dismissal is GRANTED to the extent it seeks permission to file an amended pleading. The Court previously dismissed Plaintiff's complaint without prejudice. Plaintiff shall file any amended complaint on or before March 3, 2021. Defendant may thereafter file a motion to dismiss the amended complaint (including on the grounds that Plaintiff did not cure the deficiencies in its original complaint). Defendant should also renew its motion to transfer this case. IT IS FURTHER ORDERED that the call scheduled for March 2, 2021 is CANCELLED. ORDERED by Judge Maryellen Noreika on 3/1/2021. (dlw)

1:20-cv-00404-MN Notice has been electronically mailed to:

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